

Filed by:

Trial Section Merits Panel  
Mail Stop Interference  
P.O. Box 1450  
Alexandria Va 22313-1450  
Tel: 571-272-4683  
Fax: 571-273-0042

Filed August 9, 2006

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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POLICE S. REDDY, SURESH K. TIKOO,  
and LORNE A. BABIUK  
Junior Party  
(U.S. Patent No. 6,492,343),

v.

MICHAEL A. JOHNSON, JEFFREY M. HAMMOND,  
RICHARD J. McCOY and MICHAEL G. SHEPPARD  
Senior Party  
(U.S. Application No. 09/485,512).

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Patent Interference No. 105,358  
(Technology Center 1600)(MPT)

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**JUDGMENT - Bd. R. 127(b)**

Before: LANE, MEDLEY and TIERNEY, Administrative Patent Judges.

TIERNEY, Administrative Patent Judge.

- 1           As discussed in the Order to Show Cause (Paper No. 50), VectoGen Pty Ltd  
2           (“VectoGen”) is now the owner of the involved Reddy patent and the involved Johnson  
3           application. The Order to Show Cause was issued as the United States Patent & Trademark  
4           Office does not normally maintain interferences between commonly owned patents or

1 applications. Bd. R. 206. In response to the Order to Show Cause, VectoGen has filed a request  
2 for adverse judgment against Junior Party Reddy as to Counts 1 and 2, the only counts in  
3 interference. (Reddy Request for Adverse Judgment, Paper No. 54).

4 During the course of this interference, Reddy filed three substantive motions. Reddy  
5 Motion 1 moves to attack Johnson's accorded priority benefit date. (Paper No. 29). Reddy  
6 Motion 2 alleges that all of Johnson's involved claims are unpatentable under 35 U.S.C. § 112,  
7 first paragraph for failing to provide a sufficient written description and/or failing to enable a  
8 person skilled in the art to make and use the claimed subject matter. (Paper No. 30). Reddy  
9 Motion 3 alleges that Johnson's involved claims are unpatentable under 35 U.S.C. § 112, second  
10 paragraph as the claims are indefinite. Additionally, in response to Reddy Motions 2 and 3,  
11 Johnson filed a responsive motion, Johnson Motion 2,<sup>1</sup> which requests that Johnson's claims be  
12 amended in response to Reddy Motions 2 and 3. (Paper No. 55).

13 Counsel for VectoGen, i.e., representing both Reddy and Johnson, specifically requests  
14 that Reddy's three motions and Johnson's Motion 2 be withdrawn from consideration. No  
15 Johnson oppositions to the three Reddy motions have been received by the Board. Similarly, no  
16 opposition to Johnson's responsive motion has been received by the Board. Thus, the issues  
17 raised in Reddy and Johnson's pending motions are not fully developed.

18 Reddy Motion 1, which attacks Johnson's accorded benefit date, is *dismissed* as moot in  
19 light of Reddy's request that adverse judgment be entered against Reddy. Further, based upon  
20 the facts presented in this interference, including the fact that Johnson's involved claims are

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<sup>1</sup>While the motion is titled Johnson Responsive Motion 1, this is the second Johnson motion filed in the interference. Per the Standing Order (Paper No. 2), ¶ 121.1, each motion of a party is to be numbered consecutively. Thus, Johnson's responsive motion is referred to as "Johnson Motion 2."

1 present in a pending U.S. application, a determination as to the patentability of Johnson's claims  
2 is best resolved by an examiner outside the course of this interference. Accordingly, we exercise  
3 our discretion and recommend that the examiner of Johnson's involved U.S. Application No.  
4 09/485,512 review the issues raised in Reddy Motions 2 and 3, and recommend that the examiner  
5 enter any rejection deemed necessary. Bd. R. 127(c) and *In re Sullivan*, 362 F.3d 1324, 1327, 70  
6 USPQ2d 1145, 1148 (Fed. Cir. 2004).

7 Johnson Motion 2 seeks to amend Johnson's involved claims in response to Reddy  
8 Motions 2 and 3. As we do not reach the merits of Reddy Motions 2 and 3, Johnson Motion 2 is  
9 ***dismissed*** as moot.<sup>2</sup>

10 It is:

11 **ORDERED** that judgment on priority of invention as to Counts 1 and 2, the only counts  
12 in interference, is awarded against Junior Party Reddy.

13 **FURTHER ORDERED** that Junior Party Reddy is not entitled to a patent containing  
14 claims 13-14, 16-19, 21-28, 30-40 and 43-44 of Reddy, U.S. Patent No. 6,492,343, all of which  
15 correspond to Count 1.

16 **FURTHER ORDERED** that Junior Party Reddy is not entitled to a patent containing  
17 claims 13-14, 16-19, 22-28, 31-40 and 43-44 of Reddy, U.S. Patent No. 6,492,343, all of which  
18 correspond to Count 2.

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<sup>2</sup>Additionally, we note that Johnson Motion 2 does not identify where Johnson received authorization from the Board to file this particular responsive motion and a brief review of the record failed to reveal such authorization. As Johnson Motion 2 is dismissed as moot, we need not consider whether or not the filing of this particular motion was authorized by the Board.

**FURTHER ORDERED** that Reddy Motion 1 (Paper No. 29), attacking Johnson's  
accorded priority benefit date, is *dismissed* as moot.

**RECOMMENDED** that the examiner of Johnson's involved application review Reddy  
Motions 2 and 3 (Paper Nos. 30 and 31) and make any rejections deemed necessary to ensure the  
patentability of Johnson's claims.

**FURTHER ORDERED** that Johnson Motion 2, which seeks to amend Johnson's claims  
in response to Reddy Motions 2 and 3, is *dismissed* as moot.

**FURTHER ORDERED** that a copy of this paper shall be made of record in the files of  
U.S. Application No. 09/485,512 and U.S. Patent No. 6,492,343.

**FURTHER ORDERED** that a copy of Reddy Motion 2, Reddy Motion 3 and Johnson  
Motion 2 shall be made of record in the files of U.S. Application No. 09/485,512.

**FURTHER ORDERED** that the parties attention is directed to the settlement agreement  
provisions in 35 U.S.C. § 135(c) and 37 C.F.R. § 41.205.

<u>/Sally Gardner Lane/</u>	)	
SALLY GARDNER LANE	)	
ADMINISTRATIVE PATENT JUDGE	)	
	)	
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<u>/Sally C. Medley/</u>	)	BOARD OF PATENT
SALLY C. MEDLEY	)	APPEALS AND
ADMINISTRATIVE PATENT JUDGE	)	INTERFERENCES
	)	
	)	
<u>/Michael P. Tierney/</u>	)	
MICHAEL P. TIERNEY	)	
ADMINISTRATIVE PATENT JUDGE	)	

1 cc (facsimile):  
2

3 Counsel for REDDY:  
4

5 Matthew I. Kreeger, Esq.  
6 MORRISON & FOERSTER LLP  
7 425 Market Street  
8 San Francisco, CA 94105-2482  
9 Tel: 415-268-7000  
10 Fax: 415-268-7522  
11

12 Counsel for JOHNSON:  
13

14 Michael F. Borun, Esq.  
15 MARSHALL, GERSTEIN & BORUN LLP  
16 6300 Sears Tower  
17 233 South Wacker Drive  
18 Chicago, IL 60606-6357  
19 Tel: 312-474-6300  
20 Fax: 312-474-0448